IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7346 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMICHAND JOITRAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7346 of 2001

MR IS SUPEHIA for Petitioner No. 1

MS REETA CHANDARANI, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

MR MANISH J PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 20/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged

the order dated 20.7.2001, passed by the Disciplinary Authority, by which the petitioner is ordered to undergo the penalty of withholding of one increment for the last one month of his service, over and above the liability to refund to the respondents an amount of Rs. 1,78,468/-.

2. It was the case against the petitioner that on 6th October, 1999, while the petitioner who was the Headmaster of Kadoli Group Primary School, was going with a colleague teacher with a cash of Rs. 1,78,468/- for payment of salaries, the said amount got stolen from the dicky of the scooter in which the said persons were travelling. The respondents, on the basis of the said incident, issued a charge-sheet to the petitioner on 20th October, 1999. In response to the said charge-sheet, the petitioner filed a detailed reply on 2.12.1999, in which he virtually admitted the incident, but submitted that the dicky of the scooter was locked and the scooter was parked at a safe place and thinking that therefor the amount was safe, he and the colleague teacher had not taken any further precautions. However, without the knowledge of the petitioner and his colleague, someone had broken open the dicky lock and had stolen the money. He had, therefore, submitted that he has not committed any wrong and since he is to retire with effect from 31st October, 1999 and he otherwise has satisfactory service, the proceedings may be dropped. Ignoring the said defence, the Disciplinary Authority came to the conclusion that it was on account of the negligence on the part of the petitioner that the said amount of Rs. 1,78,468/- came to be stolen. For the said misconduct, the petitioner was imposed a penalty of withholding of one increment for a period of one month and he was also ordered to refund the said amount of Rs. 1,78,468/-.

3. The petitioner himself on 26.4.2001 had given in writing that pursuant to the impugned order, the amount may be recovered but that the remaining outstanding amount towards his pension, gratuity, provident fund, leave encashment, which in all comes to about Rs. 4,93,000/- may be paid over to him. In view of this writing, it is not possible to disturb the order of the Disciplinary Authority. Even otherwise, the petitioner's defence cannot be accepted. When the petitioner was travelling with large amount of cash, as a person who is put in-charge of this amount, the petitioner was required to take appropriate care to ensure that the same is not lost or stolen. Simply putting the packet in the dicky of the scooter and not taking any care would not be sufficient. I am therefore, convinced that it is precisely because of the negligence on the part of the

petitioner that somebody could steal the amount from the locked dicky of the scooter and without negligence on the part of the petitioner, this incident would not have been taken place. In that view of the matter, the impugned order cannot be disturbed.

4. The petitioner however, in his rejoinder, made a grievance that the amounts of provident fund and group insurance have not been paid to the petitioner. When the petitioner was before this Court by filing this petition, it was expected of the respondents to release all the remaining retiral dues of the petitioner after deducting the amount of Rs. 1,78,468/- as per the order of the Disciplinary Authority. There was no further authorisation available to the respondents to withhold any amount in excess of the said figure, plus the amount of increment ordered to be with-held by the impugned order. The learned Counsel for the respondents is unable to point out that the petitioner has already received full amount of provident fund contrary to what is being contended. When the petitioner had challenged the order of penalty and the recovery, the respondents should have released the remaining amount of dues which admittedly were payable to the petitioner and the pendency of the petition could not have been utilised for with-holding of any further amount. In that view of the matter, though so far as the challenge to the impugned order dated 20.7.2001 fails, the respondents are directed to release the remaining amount of provident fund with accumulated interest and any other retiral dues still outstanding in favour of the petitioner with simple interest at the rate of 8% per annum from the date of superannuation, till actual payment. With these directions, the petition is disposed of.

Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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